IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8556 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SHANKARBHAI V RATHOD

Versus

STATE OF GUJARAT

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Appearance:

MR YOGESH S LAKHANI for Petitioner

GOVERNMENT PLEADER for Respondent No. 1

RULE SERVED for Respondent No. 2

MR MC BAROT for Respondent No. 4

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CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 28/09/2000

ORAL JUDGEMENT

The petitioner, by this application under Article 226 of the Constitution of India prays for issuance of a Writ of Certiorari, a Writ of Mandamus or any other appropriate Writ quashing and setting aside the judgement and order passed by the respondent No.1 in Revision Application No.1803 of 1995 dtd. 16th August, 1996,

whereby the judgement and order dtd. 6th August, 1993 passed by the respondent No.2 in Case No. 216 of 1993 and the order dtd. 31st January, 1994 passed by the respondent No.3 in Appeal No.16 of 1993 came to be confirmed.

2. The facts leading the present petitioner to file this petition shortly stated are that for the last over 25 years he has been running a fair price shop taking licence as per the then prevailing law. He is carrying on his business strictly in accordance with law and has committed no wrong. On 15th March, 1993, his shop was inspected and one or two irregularities with regards to wheat were found. A notice on 9th July, 1993 was given by the respondent No.2. A detailed reply after the receipt of notice was given, making it clear that there was no irregularity and no wrong in fact could be found to have been ever committed. On 3/8/1993, the respondent No.2 without considering the materials before him, rejected the application. Thereafter, an appeal being Appeal No.16 of 1993 before the respondent No.3 was preferred, which came to be rejected on 31st January, 1994. Against that decision in Appeal, Revision Application was preferred before the respondent No.1, which was also came to be rejected on 6th March, 1995. The petitioner was, therefore, constrained to prefer Special Civil Application No.4355 of 1995 in this Court.

3. This Court remanded the matter on 26th March, 1996 for a fresh consideration of respondent No.1. Keeping in mind the peculiar fact that the wheat was taken out of the operation of the Gujarat Essential Articles (Licencing Controlling and Stock Declaration) Order, 1981. Thereafter, the respondent NO.1 rejected the Revision Application on 16th August, 1996. In likewise cases, the authorities instead of withdrawing the licence, withdrew notices and continued the licences of Natvarsinh Vaghela and Vastabhai Patel, but the petitioner's case, without application of mind and without considering the materials as well as the order of the High Court, was turned down deliberately amounting to discrimination. This petition is therefore filed against those orders, challenging the legality and validity thereof.

4. Having heard the learned advocate representing the petitioner it appears that the authorities have arbitrarily passed the order and they have set at naught the principle of fair play. Admittedly the order in question when the shop was inspected was not at all applicable because in view of the notification issued on

27th October, 1986 and published in Gujarat Government Gazette Part IV-A dtd. 27th October, 1986 bearing No.GTH-86-29-ECA-1086-GOI-120-B, the wheat was not included in the food-grains items or products and the same was not covered by the order in question. As the order was not applicable, the petitioner was not bound to maintain any stock register and was not accountable to the authorities in any way qua wheat. However, from his affidavit, it appears that there was a difference of only one kg. wheat which is negligible, and that can happen for several valid reasons. The authorities, inspecting the shop, have on the basis of the conjectures and inferences jumped to the conclusion about the wrong having been committed, but in fact, no wrong can be said to have been committed when the order was not at all applicable, and he was, under no obligation to comply with the terms and conditions of the licence of the order, as alleged qua wheat. The authorities have also mentioned in the order that the above referred order was not applicable but because of the licence issued, the petitioner was bound to comply with the terms and conditions of the licence. The said approach is fallacious for the above stated reasons. When thus the impugned order is based on ill-based inferences and assumption and not on the facts acceptable and reliable in law; and also knowing full well that the order of 1981 was not applicable, the same can well be termed arbitrary unreasonable and having been passed in bad faith. When that is so, the same is required to be quashed and set aside with a direction to the authority to review the order without being bias, or prejudicial, or obsessed with any notion and pass appropriate order qua licence.

6. For the aforesaid reasons, the application is allowed and the impugned order dtd. 16th August, 1996 passed in Revision Application No.1803 of 1995 is hereby quashed and set aside. The respondent No.2 shall review his order, keeping the above stated facts in mind and shall pass appropriate order regarding the licence.

Rule accordingly made absolute.

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